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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,609	02/18/2004	Fami Weaver	2284	2700

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EXAMINER

PEACHES, RANDY

ART UNIT	PAPER NUMBER
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2617

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/781,609

Applicant(s)

WEAVER, FARNI

Examiner

Randy Peaches

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. ***Claims 1-31*** are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung Kam chung et al. (U.S. Patent Number 6,606,502 B1) in view of Jiang et al. (U.S. Publication Number 2005/0096059 A1).

Regarding ***claims 1, 23 and 28***, Chung Kam chung et al. discloses a method for delivering electronic messages, comprising:

- sending, from a message sender, a request for a delay report. See column 3 lines 30-43 and column 5 lines 35-52;
- receiving from a message center (MC,22)/SMS originator (30) a request for a capability report, which reads on claimed "delay report." See column 3 lines 30-43 and column 5 lines 35-52;
- determining an expected delay for delivery of an electronic message, wherein the a MSC sends a capability report to the said MC (22). See column 3 lines 40-43; and

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- sending a delay report to the said MC (22). See column 7 lines 1-20
- based on the delay report, determining, at the message sender, whether the expected delay is less than a threshold delay. See column 3 lines 40-43; and

However, Chung Kam chung et al. fails to clearly disclose wherein a delay report includes information on the length of the expected delay.

Jiang et al. discloses in paragraph [0017], wherein it is determined the length of the expected delay based on criteria.

Therefore, at the time of the invention it would have been obvious to a person of ordinary skilled in the art to modify Chung Kam chung et al. (U.S. Patent Number 6,606,502 B1) to include Jiang et al. (U.S. Publication Number 2005/0096059 A1) in order to notify a user of the expected delay time that is calculated by a message handler.

Regarding **claim 2**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claim 1**, Chung Kam chung et al. continues to disclose wherein the request for a delay report is a delay query. See column 7 lines 54-67 and FIGURE 4b.

Regarding **claim 3**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claim 1**, Chung Kam chung et al. wherein the request for a delay report is a subscription request.

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Regarding **claim 4**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claim 1**, Chung Kam chung et al. wherein determining the expected delay includes measuring an actual delay time for the delivery of a test message. See column 7 lines 54-67.

Regarding **claim 5**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claim 1**, Chung Kam chung et al. wherein the expected delay is determined at least in part from the number of messages (current load) queued at a MSC, which reads on claimed "message gateway." See column 7 lines 54-62.

Regarding **claims 6 and 27**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claims 5 and 14**, Chung Kam chung et al. wherein the said MSC is a bulk message gateway. See column 9 lines 37-41.

Regarding **claim 7**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claim 1**, Chung Kam chung et al. wherein the delay report sent to the said MC (22) is one of a plurality of delay reports sent periodically to the sender. See column 9 lines 20-24.

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Regarding **claims 8, 11, 18-20 and 31**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claims 1, 17 and 30**, Chung Kam chung et al. wherein the expected delay has fallen below a threshold delay, wherein the delay report is sent in response to the determination that the expected delay has fallen below the threshold delay. See column 7 lines 59-67 and column 10 lines 36-65.

Regarding **claims 9 and 15-16**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claims 1 and 14**, Chung Kam chung et al. discloses wherein the delay report is sent in response to a delay query from the said MC (22). See column 3 lines 30-40.

Regarding **claim 10**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claim 1**, Jiang et al. discloses wherein the delay report includes the length of the expected delay. See paragraph [0016-0017].

Therefore, at the time of the invention it would have been obvious to a person of ordinary skilled in the art to modify Chung Kam chung et al. (U.S. Patent Number 6,606,502 B1) to include Jiang et al. (U.S. Publication Number 2005/0096059 A1) in order to notify a user of the expected delay time that is calculated by a message handler.

Regarding **claims 12 and 21**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claims 1 and 14**, Chung Kam chung et al. discloses wherein the electronic message is a short message service message. See Column 5 lines 27-33.

Regarding **claim 13**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claim 1**, Chung Kam chung et al. discloses claim 1, wherein the delay report may be in different formats depending on the protocol, which can include session initiation protocol message. See column 7 lines 1-11.

Regarding **claims 14 and 30**, Chung Kam chung et al. discloses a delivery method comprising:

- determine whether an expected delay for delivery of an electronic message is less than a threshold. See column 7 lines 54-67.
- sending the electronic message only after determining that the expected delay is less than a threshold. See column 7 lines 54-67.

However, Chung Kam chung et al. fails to clearly disclose wherein a delay report includes information on the length of the expected delay.

Jiang et al. discloses in paragraph [0017], wherein it is determined the length of the expected delay based on criteria.

Therefore, at the time of the invention it would have been obvious to a person of ordinary skilled in the art to modify Chung Kam chung et al. (U.S. Patent Number

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6,606,502 B1) to include Jiang et al. (U.S. Publication Number 2005/0096059 A1) in order to notify a user of the expected delay time that is calculated by a message handler.

Regarding **claim 25**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claim 23**, Chung Kam chung et al. wherein the

- report generator is operative to determine when the expected delay falls below a threshold delay. See column 7 lines 54-67; and
- the report generator is further operative to generate a delay report in response to the expected delay falling below the threshold delay. See column 7 lines 54-67.

Regarding **claims 26 and 29**, as the combination of Chung Kam chung et al. and Jiang et al are made, the combination according to **claims 23 and 28**, Chung Kam chung et al. wherein the said delay estimator determines the expected delay based at least in part on the number of messages queued at a message gateway. See column 7 lines 42-67.

Response to Arguments

Applicant's arguments filed 1/8/2007 have been fully considered but they are not persuasive.

Regarding the Applicants arguments wherein the claimed invention distinguishes over the prior art of record at least with respect to the type of delay at issue and also with

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respect to how the existence era delay affects message delivery. The Examiner respectfully maintains that, according to the cited prior art of Chung Kam chung et al., i.e. column 7 lines 54-67, FIGURE 4b, clearly renders sufficient support as to the type of delay at issue. In addition, Jiang et al. teaches of the length of time the expected delay will take place, which in turn effects the message delivery.

Claims 1-32 stand rejected.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy Peaches whose telephone number is (571) 272-7914. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Randy Peaches
March 18, 2007
RP


CHARLES N. APPIAH
SUPERVISORY PATENT EXAMINER